

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 10/19/2020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRETT WHEELER,

Plaintiff,

-against-

NYC DOC: JOHN DOE # 1,

Defendant.

19-CV-9689-MKV

ORDER

MARY KAY VYSKOCIL, United States District Judge:

Plaintiff, who is currently incarcerated in Sullivan Correctional Facility, brought this *pro se* action under 42 U.S.C. § 1983, alleging that Defendant violated his rights when he was detained on Rikers Island. The Court issued a Valentin Order on April 23, 2020, directing the New York City Law Department, the attorney for and agent of the New York City Department of Correction (“DOC”), to ascertain the identity of the John Doe whom Plaintiff seeks to sue here and the address where the defendant may be served [ECF No 12].

On August 21, 2020, the New York City Law Department filed a letter report informing the Court that it was unable to identify the DOC employee whom Plaintiff describes in his Amended Complaint [ECF No. 19]. However, the New York City Law Department was able to identify, upon information and belief, several individuals as being in or near the area where the inmate altercation alleged in the Amended Complaint occurred.

The letter report indicates that a copy was sent to Plaintiff by First Class Mail. Pursuant to the Valentin Order, Plaintiff was directed to file a second amended complaint naming the John Doe Defendant within thirty days of receiving the report of the New York City Law Department [*see* ECF No. 12]. To date, Plaintiff has not filed a second amended complaint.

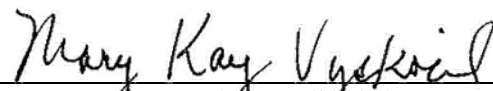
Accordingly, IT IS HEREBY ORDERED that on or before **November 16, 2020**, Plaintiff shall file a second amended complaint that either provides additional details about the John Doe defendant, so that the New York City Law Department might identify that individual, or names a defendant or defendants. If the second amended complaint only provides additional details about the John Doe defendant, the Court will order the New York City Law Department to conduct a follow-up investigation. If it names a defendant or defendants, the second amended complaint will replace, not supplement, the original and amended complaints. A second amended complaint form that Plaintiff should complete is attached to this Order. Once Plaintiff files a second amended complaint, the Court will screen the second amended complaint and, if necessary, issue an order asking the defendant to waive service.

Failure to comply with this order and the deadlines herein may result in dismissal of this action.

The Clerk of Court is respectfully requested to mail a copy of this Order to the *pro se* Plaintiff, together with an information package. The Clerk of Court is also respectfully requested to close docket entry 14, as the Notice of Motion does not state any request of the Court [*see* ECF No. 14].

SO ORDERED.

Dated: October 19, 2020
New York, New York



MARY KAY VYSKOCIL
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

-against-

No. _____

(To be filled out by Clerk's Office)

**SECOND AMENDED
COMPLAINT**
(Prisoner)

Do you want a jury trial?

☐ Yes ☐ No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a “*Bivens*” action (against federal defendants).

☐ Violation of my federal constitutional rights

☐ Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

First Name	Middle Initial	Last Name
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State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Prisoner ID # (if you have previously been in another agency’s custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Current Place of Detention

Institutional Address

County, City	State	Zip Code
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III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

☐ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☐ Convicted and sentenced prisoner

☐ Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence: _____

Date(s) of occurrence: _____

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated		Plaintiff's Signature
First Name	Middle Initial	Last Name
Prison Address		
County, City	State	Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: _____